



## **CITY OF HAYWARD**

### **AGENDA REPORT**

AGENDA DATE 04/13/99

AGENDA ITEM 7

WORK SESSION ITEM \_\_\_\_\_

**TO:** Board of Directors  
Housing Authority of the City of Hayward

**FROM:** Director of Community and Economic Development

**SUBJECT:** Amendment and Restatement of Trust Indenture and Financing Agreement for  
Housing Authority Variable Rate Demand Multifamily Mortgage Revenue  
Refunding Bonds, Series 1993A (Huntwood Terrace Apartments)

#### **RECOMMENDATION:**

It is recommended that the Board of Directors: Adopt the attached resolution authorizing the execution and delivery of an Amended and Restated Trust Indenture and an Amended and Restated Financing Agreement and other documents and actions to be taken in connection with \$5,900,000 Housing Authority of the City of Hayward Variable Rate Demand Multifamily Housing Revenue Refunding Bonds, Series 1993A.

#### **DISCUSSION:**

The 104-unit Huntwood Terrace Apartments, located at 29200 Huntwood Avenue, was originally constructed pursuant to bond financing by the Housing Authority of the City of Hayward approved in 1985. The 1985 bonds were refunded in 1993 by the issuance of the Authority's \$5,900,000 Variable Rate Demand Multifamily Mortgage Revenue Refunding Bonds, Series 1993A. The refunding bonds were issued in order to cure the default on the original loan that resulted from substantial operating deficits at the project over a period of years and to provide an A-1+ rating.

The purpose of the present action is to provide for an alternate credit enhancement that will result in a triple A rating on the bonds, thereby assuring a more competitive interest rate on the bonds and the project mortgage.

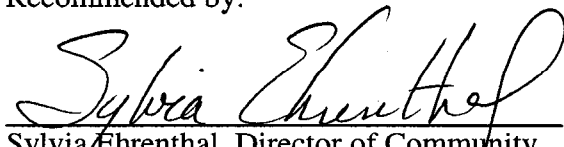
The bonds, as currently structured, are secured or credit enhanced by an irrevocable direct pay letter of credit issued by Sumitomo Bank. This provided for a rating on the bonds of A-1+ when they were issued in 1993. Since that time, Sumitomo Bank, like many Japanese banks, has experienced a reduction in its credit rating. The owner of Huntwood Terrace Apartments has, therefore, requested that the Trust Indenture and the Financing Agreement be amended to provide for an alternate credit enhancement. This will help lower the variable interest rate on the bonds.

It is proposed that Sumitomo be replaced by State Street Bank so the bonds will be AA rated. In addition, the underlying Federal Housing Administration (FHA) mortgage insurance will be further enhanced by a GNMA Security acquired by the Trustee in the same face amount as the Bonds. GNMA guarantees the timely payment of principal of, and interest on, securities backed by a mortgage co-insured by FHA. Securities authorized by GNMA "constitute general obligations of the United States backed by its full faith and credit."

In other respects, the provisions of the 1993 bond documents will remain the same. The bonds are a limited obligation of the Housing Authority, payable solely from the revenues, receipts and security pledged in the Indenture. The payment of principal and interest is neither guaranteed nor secured by a pledge of the faith and credit of the Housing Authority.

The 1993 Indenture and Financing Agreement provide that the Issuer and the Trustee may amend the agreements to comply with the requirements of any alternate credit enhancement provider, as long as the amendments are determined not to be adverse to the interests of the bondholders. Bond Counsel has assured that this is the case. Copies of the pertinent documents, in substantially their final form, are on file in the Office of the City Clerk.

Recommended by:

  
Sylvia Ehrenthal, Director of Community  
And Economic Development

Approved by:

  
Jesús Armas, City Manager

Attachments: Resolution

**DRAFT**

On 4-6-93

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

**RESOLUTION AUTHORIZING AND DIRECTING THE  
EXECUTION AND DELIVERY OF AN AMENDED AND  
RESTATED TRUST INDENTURE AND AN AMENDED AND  
RESTATED FINANCING AGREEMENT AND OF OTHER  
DOCUMENTS AND ACTIONS TO BE TAKEN IN  
CONNECTION THEREWITH**

WHEREAS, the Housing Authority of the City of Hayward (the "Issuer") is authorized under Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Act"), to issue bonds and loan the proceeds thereof to qualified borrowers for the purpose of refinancing the development of multifamily housing projects for persons and families of low and moderate income residing within the State of California; and

WHEREAS, the Issuer issued its \$6,245,000 Multifamily Housing Revenue Bonds, Series 1985D (FHA Insured Mortgage Loan-Huntwood Terrace Apartments Project) and its \$500,000 Multifamily Housing Revenue Bonds, Series 1985E (Huntwood Terrace Apartments Project) (the "Prior Bonds") for the purpose of funding a mortgage loan to Huntwood Terrace Associates, a California Limited Partnership (the "Borrower") to finance the acquisition, construction and equipping of a 104-unit multifamily housing rental project located in the City of Hayward (the "Project") by loan of the proceeds thereof to the Borrower (the "Prior Loan") evidenced by a promissory note of the Borrower (the "Prior Note") pursuant to a Development Agreement among the Issuer, the Borrower and Bank of America National Trust and Savings Association, as successor to Security Pacific National Bank, as Trustee (the "Prior Trustee"), dated as of December 1, 1985 (the "Prior Loan Agreement"); and

WHEREAS, the Issuer issued its \$5,900,000 Variable Rate Demand Multifamily Mortgage Revenue Refunding Bonds, Series 1993A (Huntwood Terrace Apartments) (the "Bonds") pursuant to a Trust Indenture, dated as of October 1, 1993, between the Issuer and U.S. Bank Trust National Association, as successor trustee (the "Trustee") (the "Indenture"), the proceeds of which were loaned to the Borrower pursuant to a Financing Agreement, dated as of October 1, 1993, by and among the Issuer, the Prior Trustee and the Borrower (the "Financing Agreement"), which loan proceeds, together with other monies, were used to refund the Prior Bonds; and

WHEREAS, in connection with the issuance of the Bonds the Borrower caused to be issued a Credit Enhancement (as hereinafter defined) to secure the payment of the principal of and interest on the Bonds according to their terms and effects; and

WHEREAS, the Borrower desires to deliver an Alternate Credit Facility (as hereinafter defined) in the form of a substitute letter of credit to be issued by State Street Bank and Trust Company (the "Alternate Credit Enhancement Provider") pursuant to the provisions of the Indenture and the Alternate Credit Enhancement Provider has required that in connection with the delivery of its substitute letter of credit, the Lender ( as hereinafter defined) deliver to the Trustee on behalf of the Borrower the amount necessary to fully secure the repayment of any amounts drawn under the Alternate Credit Enhancement prior to the delivery of the GNMA Security (as hereinafter defined) and thereafter to deliver the GNMA Security guaranteed as to the timely payment of principal and interest by GNMA (as hereinafter defined) with respect to the Prior Loan; and

WHEREAS, Section 801(f) of the Indenture provides that the Issuer and the Trustee, without the consent of or notice to any Bondholder, may amend the Indenture "to comply" with requirements of any Alternate Credit Enhancement Provider which are determined by the Issuer not to be adverse to the interest of the Bondholders; and

WHEREAS, Section 11.3 of the Financing Agreement provides for the amendment thereof with the prior written consent of the Trustee, the Credit Enhancement Provider, the Borrower and the Issuer, and Section 803 of the Indenture provides that the Issuer and the Trustee, with the consent of the Credit Enhancement Provider, and acting in reliance upon an Opinion of Counsel, may enter in to an amendment of the Financing Agreement, which is not to the prejudice of the Trustee and the holders of the Bonds; and

WHEREAS, the Credit Enhancement Provider, the Trustee and the Borrower shall consent in writing to the amendment and restatement of the Indenture and the Financing Agreement as herein provided; and

WHEREAS, the Trustee has determined that the provisions of this Amended and Restated Indenture and the Amended Financing Agreement (each as herein defined) are not adverse or prejudice to the Trustee or the interest of the Bondholders.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSING AUTHORITY OF THE CITY OF HAYWARD AS FOLLOWS:

SECTION 1. Amendment of Indenture. The Amended and Restated Trust Indenture (the "Amended and Restated Indenture") between the Issuer and U.S. bank Trust National Association, as successor trustee (the "Trustee"), in the form on file with the Secretary, is hereby approved. The Chairperson, Executive Director or Deputy Director of the Housing Authority of the Issuer ( the "Designated Officers") are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the Issuer, to execute and deliver the Amended and Restated Indenture, and the Secretary is hereby authorized and directed, for and in the name of and on behalf of the Issuer, to attest the Designated Officer's signature on the Amended and Restated Indenture, in substantially the form prepared, with

such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the Issuer, including such additions or changes as are necessary or advisable in accordance with Section 3 hereof, the approval of such additions or change to be conclusively evidence by the execution and delivery by the Issuer of the Amended and Restated Indenture.

**SECTION 2. Amendment of Loan Agreement.** The Amended and Restated Financing Agreement (the "Amended Financing Agreement") between the Issuer, the Borrower, TRI Capital Corporation and the Trustee, in the form on file with the Secretary, is hereby approved. The Designated Officers are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the Issuer, to execute and deliver the Amended Financing Agreement, and the Secretary is hereby authorized and directed, for and in the name of and on behalf of the Issuer, to attest the Designated Officer's signature on the Amended Financing Agreement, in substantially the form prepared, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the Issuer, including such additions or changes as are necessary or advisable in accordance with Section 3 hereof, the approval of such additions or changes to be conclusively evidence by the execution and delivery by the Issuer of the Amended Financing Agreement.

**SECTION 3. Official Action.** The Designated Officers, any and all other officials of the Issuer or such other person designated by the Issuer are hereby directed, for and on behalf of the Issuer, to do any and all things and take any and all actions, including, without limitation, the execution and delivery of any and all amendment or supplements to the documents executed and delivered by the Issuer in connection with the issuance of the Bonds, including but not limited to, any supplements or amendment to the Indenture or the Financing Agreement, including the Amended and Restated Indenture and/or the Amended Financing Agreement, any and all assignment, certificates, agreements, notices, consents, instruments of conveyance and other documents, which they, or any of them, on the advice of bond counsel to the Issuer, may deem necessary or advisable in order to effect the Amended and Restated Indenture and the Amended Financing Agreement, as provided herein, including, but not limited to, an intercreditor agreement with respect to the deed of trust securing the Bonds, and any and all assignments, certificates, agreements, notices, consents, instruments of conveyance and of the documents which may be required in connection with the purchase of the bonds in lieu of redemption of all outstanding Bonds at the time of the execution and delivery of the Amended and Restated Indenture and the Amended Financing Agreement or at such later date, which they, or any of them, on the advice of bond counsel to the Issuer, may deem necessary or advisable in connection with the amendment of the Indenture and the Financing Agreement, as provided herein.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 1999

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward